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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,264	12/09/2003	Gregory H. Loibl	6011.005.200	4708

7590

01/26/2005

Levisohn, Berger & Langsam LLP  
19th Floor  
805 Third Avenue  
New York, NY 10022

EXAMINER
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LEUNG, RICHARD L

ART UNIT	PAPER NUMBER
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3744

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/731,264	<b>Applicant(s)</b> LOIBL ET AL.	
	<b>Examiner</b> Richard L. Leung	<b>Art Unit</b> 3744	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 November 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 126 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 126 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                        |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11-03-04</u> . | 6) <input type="checkbox"/> Other: _____   |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claim 126 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5505054 (Loibl et al.). Loibl et al. disclose an apparatus for rapidly cooling a liquid in a container comprising a housing 1 having a bottom and side walls defining an interior volume, a rotating mechanism 3a-f having a longitudinal axis disposed in said housing adapted to rotate a container about the container's longitudinal axis, a source 7a of a thin film of a cooling medium, wherein when the container is placed within the interior volume, the thin film of cooling medium thermally communicates with the container while the rotating mechanism rotates the container. Loibl et al. fail to expressly disclose that the housing is part of a household refrigerator. At the time the invention was made, it would have an obvious matter of design choice to a person of ordinary skill in the art to have the container be part of a household refrigerator because Applicants have not disclosed that making the container part of a household refrigerator provides an advantage, is used for a particular purpose, or solves a stated problem. Furthermore, one of ordinary skill in the art would have expected Applicant's invention to perform equally well as a stand alone unit (as demonstrated by the reference) because both systems perform the function of rapidly cooling beverage containers satisfactorily.

***Response to Arguments***

3. The declaration under 37 CFR 1.132 filed 02 November 2004 are insufficient to overcome the rejection of claim 126 based upon 35 U.S.C 103 as set forth in the last Office action because:

It includes statements which amount to an affirmation that the affiant has never seen the claimed subject matter before. See paragraph 2. This is not relevant to the issue of nonobviousness of the claimed subject matter and provides no objective evidence thereof. See MPEP § 716.

It includes statements which amount to an assertion of commercial interest. See paragraph 7. This is not relevant to the issue of nonobviousness because an allegation of commercial interest is not equivalent to objective evidence of commercial success.

Furthermore, it includes statements which amount to an assertion of various advantages of the present invention that are not enabled by the written description. Therefore, these statements are not relevant. The written disclosure lacks the necessary structural details to enable one skilled in the art to connect the cooling device with the household refrigerator in a manner required to achieve the asserted advantages. For instance, there is no disclosure of how exactly the device uses the existing refrigerator compressor or eliminates external ice since there is no description of the requisite structural connections between the cooling device with the household refrigerator. Therefore Applicants' arguments, as presented, were not deemed sufficient to overcome the obviousness rejection.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

4. Applicants' arguments filed 02 November 2004 and again presented in a telephonic interview on 05 January 2005 recite similar arguments to the ones mentioned above and are also unpersuasive for the same reasons.

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard L. Leung whose telephone number is 571-272-4811. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise L. Esquivel can be reached on 571-272-4808. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3744

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Richard L. Leung  
Examiner  
Art Unit 3744

  
CHERYL J. TYLER  
PRIMARY EXAMINER

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